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## TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 95

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ROBERT E. TOD, COMMISSIONER OF IMMIGRATION,  
PETITIONER,

vs.

SZEJWA WALDMAN AND HER THREE MINOR CHILDREN,  
ZENIA, BESSIE, AND SOPHIA

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT

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Petition for certiorari filed June 25, 1923. Certiorari and return filed  
November 1, 1923

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 95

HERBERT E. TOD, COMMISSIONER OF IMMIGRATION,  
PETITIONER.

vs.

EDMUND W. WALDMAN AND HER THREE MINOR CHILDREN,  
ZENIA, BESSIE, AND SOPHIA

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT

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*Minutes of Hearings, August 30, 1922*

KS-107.

Names of aliens:

Waldman, Szejwa 32f widow,

Pesia 12f child,

Sostia 9f "

Zenja 7f "

Before a board of special inquiry held at Ellis Island New York Harbor, August 30, 1922

Present—Messrs. O'Connor (Chmn.), Travis, and Lovejoy,  
Int. Volovick,

Cannot read. Ph. Def. LPC. Bishara, Insp.

S. I. 47. SS. "France," French, Aug. 28, 1922. Embarked at Havre, Aug. 19, 1922.

ALIEN, being sworn sworn, testified:

All born and always lived at Proskurow, Province of Podolia, Russia, where we have no relatives.

Cannot read. Tested class 5-1608, Yiddish. (By Insp. Travis: Reads some of the words and repeats to interpreter without looking at the text, but cannot make any connecting thought). My married brother, Libe Lisker, in the United States, paid our passage.

I am a white goods seamstress since my husband's death. Never in the United States before.

Going to my brother at 141 Chester Avenue, Providence, R. I.; no money; no ticket. Going to join my three brothers, Libe, Chaim, and Israel, and three sisters, Bella, Leah, and Feige, all sisters and one brother being married, and remaining in the United States permanently.

Medical certificate #3651, dated 8-28-22, for Zenia Waldman, 7f, manifest No. 6-21. This is to certify that the above-described person has this day been examined and is found to be afflicted with dislocation of left hip, with shortening of left leg and lameness, which may affect ability to earn a living. In our opinion the condition herein certified might have been detected by competent medical examination at the foreign port of embarkation.

(Sgd.) R. C. FAUGHNAN & M. REYNOLDS,

*Sdgs.*

She has Polish passport for four persons issued at Warsaw, Poland, on December 12th, 1921, and visaed at Warsaw, Poland, by the American consul on July 14, 1922, with notation "Four persons born in Russia," and authorized by department, April 7, 1922.

Never debarred or deported from the United States or Canada.

Q. Have any of you ever been inmates of a charitable institution?

A. No.

Q. How have you and your children been maintained since your husband's death?

A. I was working as a seamstress.

Q. Did you earn sufficient to support yourself and your children?

A. Yes.

Q. Why was it necessary for your brother to pay your passage to the United States?

A. I couldn't save enough money for passage out of my earnings.

Q. How long has your brother been in this country?

A. Brothers and sisters are in this country from twelve to thirty years.

Q. Did they notify you to come here and bring your children with you with the assurance that they would provide for you and send your children to school?

A. Yes.

Q. Did you ever attend school yourself?

A. I attended a Jewish religious school for about two years where they were teaching how to pray.

Q. Have your children ever been in attendance at school prior to coming here?

A. The oldest child was; the others weren't to school yet.

Q. What do you expect to do here to maintain yourself and children?

A. To continue working as a seamstress.

Q. And who would care for your children while you would be at work?

A. My brother's wife.

Q. Your child Zenia is certified as being lame. How long has she been in that condition?

A. She was born that way.

To the Child ZENIA:

Q. How old are you?

A. Seven years.

Q. Have you never attended school?

A. No.

To the Child PESIA:

Q. How old are you?

A. Twelve.

Q. How long did you attend school?

A. One year.

Q. Can you read?

A. Yes.

Q. How much did you pay for your passage to the United States?

A. \$114.00 for each full ticket. The younger two children came on half tickets.

Q. How much did you pay for the half ticket?

A. \$57.00 for the half ticket.

Q. Does that include the head tax?

d A. Yes, everything included from Warsaw to New York. They charged one full ticket for the two small children. I had no other payment to make.

Q. Why did they charge you \$114.00 for your daughter Pesia, when there was no head tax?

A. I don't know. This was the charge I had to pay.

Q. Are you leaving the country of your last permanent residence to avoid persecution on account of your religious belief or your race?

A. I left my native town seventeen months ago as soon as I could after series of pogroms in my town three years ago.

Q. Have you had any pogroms or persecutions practices in your native town since that time?

A. There were no more pogroms, but there was on two occasions a general looting of Jewish property.

Q. Then you didn't leave your native town on account of persecutions because of your religion or race?

A. We were all in fear of repetition of pogroms and twenty-five of my relatives in that town were killed at that time.

A. How long ago?

A. Three and one-half years ago.

Q. Were you or your children ever molested in your native town prior to leaving for the United States?

A. No, except that I had to hide with my children on several occasions during these pogroms.

By Inspector TRAVIS.

Q. When you left your native town seventeen months ago, to what place did you go?

A. To Eastern Galicia, Lemberg.

Q. Was there any religious persecution there?

A. No.

e By Mr. LOVEJOY:

Q. Were you asked by the agent of the steamship company or by the American consul prior to your embarkation whether you were able to read or not?

A. No; in either place I was only asked to sign my name. I was not asked to read.

By CHAIRMAN:

Q. Were you asked by the agent of the steamship company to pay anything in addition to the regular scheduled fare?

A. No.

WITNESS, being duly sworn, testified in English:

Q. What is your name and address?

A. Harris Lisker, Providence, R. I., 141 Chester Avenue.

Q. For whom do you appear?

A. My sister and brother and my sister's children [names aliens].

Q. How long have you been in the United States?

A. For thirty years.

Q. Are you a citizen?

A. Yes.

(Shows naturalization certificate issued to Harris L. Lisker by the United States District Court in the District of Rhode Island, held at Providence, 3rd day of October, 1894, with the seal of the court and signature of the clerk affixed.)

Q. In what business are you engaged?

A. Working as a agent for the Metropolitan Life Insurance Company.

Q. What is your salary?

A. About \$3,000 a year.

Q. Have you money saved?

A. Yes, about \$1,800; some in the bank, in the Union Trust, and some in Liberty bonds. Haven't got the bank book with me.

Q. Have you any property?

A. Yes; the house where I reside.

Q. What is that worth?

A. \$8,000.

Q. How much mortgage against it?

A. \$2,600.00.

Q. Have you deeds with you?

A. No.

Q. Did you notify your sister to come to the United States and bring her children?

A. Yes.

Q. Where is her husband?

A. I think he died about six or seven years ago.

Q. Are you married?

A. Yes; wife and eight children, all self-supporting.

Q. What can and will you do for your sister and her children if they are admitted?

A. I will take care of them.

Q. You will take them to her home, provide for them all, find suitable employment for your sister and assure the board that the children will be sent to school until they reach the age of sixteen and not be sent to work unsuited to their years?

A. Yes.

WITNESS, being duly sworn, testified in English:

Q. What is your name and address?

A. Hyman Lisker, 424 Public Street, Providence, Rhode Island.

Q. For whom do you appear?

A. My sister, brother, and sister's children [names aliens].

Q. How long have you been in this country?

A. Fifteen years.

Q. Are you a citizen of the United States?

A. No.

Q. Have you applied for first papers?

A. Yes.

Q. Have you got them with you?

A. No.

Q. When did you take out your first papers?

A. I don't remember when. I obtained these papers in Providence, in the United States District Court.

Q. How are you employed?

A. Collector of real-estate rents.

Q. What is your salary?

A. Thirty-five dollars.

Q. Have you any money saved?

A. Yes, in the National Exchange Bank, with a balance of about \$800.00.

Q. Own any property?

A. No.

Q. Married?

A. No.

Q. With whom are you living?

A. Boarding.

Q. Have you been contributing toward the support of your sister and her children?

A. Yes; all the time.

Q. How much have you sent to her in all?

A. About \$1,200.

Q. What can and will you do for your sister if they are admitted?

A. Support them.

Q. Do you assure this board that you will take and provide for your sister, send the children to school until they reach the age of sixteen and see that they are not sent to work unsuited to their years?

A. Yes.

ALIENS, recalled.

Q. If you should be denied admission to the United States and the Secretary of Labor should allow a refund of the passage money paid for yourself and your child Zenia, where and to whom would you desire this refund made?

A. To the Hebrew Society at Warsaw, at No. 34 Muranowska.

By Inspector TRAVIS:

I move that the oldest alien be excluded as a person unable to read and Zenia Waldman be excluded as a person suffering with a physical defect, defect being of such a nature that it may affect ability to earn a living, and all aliens excluded as likely to become a public charge, and assisted aliens.

By Mr. LOVEJOY:

I second the motion.



By CHAIRMAN :

I make it unanimous.

To aliens: You have been excluded by this board as a person unable to read and your child Zenia has been excluded as suffering from a physical defect, defect being of such a nature that it may affect ability to earn a living. You have all been excluded as persons likely to become a public charge, and as assisted aliens. You have the right to appeal to the Honorable Secretary of Labor at Washington for a review by him of this proceeding as to whether you shall be admitted or debarred. His decision is final. Do you wish to appeal?

A. Yes.

The Secretary may, in his discretion, order a refund of the passage money paid for yourself and child Zenia. In that event the refund will be sent to you at the address given. If deported, you will be returned to the country whence you came, by the first available ship of the line which brought you here, in the same class in which you arrived, and without any expense to yourself. Do you understand your rights?

A. Yes.

K. STECKLER, *Secretary*.

*Minutes of hearing, September 19, 1922*

K S—119.

Names of aliens:

Waldman, Szejwa, 32f mothr.

Pesia, 12f chld.

Sosia, 9f "

Zenia, 7f "

Before a board of special inquiry held at Ellis Island, New York Harbor, N. Y., September 19, 1922

Present—Insp. Connor (Chmn), Scarlett, and Parker.

Int. Volovick.

Can not read: Ph. Def.; LPC. Bishara, Insp.

S I 47, SS, "France," French, Aug. 28, 1922.

Excluded K S—107-8/30 22.

SEPTEMBER 18, 1922.

BOARD OF S. I. CHIEF DEPORTING OFFICER, INFORMATION DIVISION:

Bureau letter of September 15th directs in the case of Szejwa Waldman and children, S I 47, SS, "France," August 28th, that the case be reopened before the board of special inquiry and the woman be given a reexamination as to her ability to read in both Hebrew and Yiddish, if she so chooses, and in case she fails to pass the test

that they all be deported without further reference of the case to the department.

Act accordingly.

(Sgd)

H. R. LANDIS.

*Assistant Commissioner (BSI & A).*

*j* ALIEN, recalled.

Q. What is your name?

A. Szejwa Waldman.

Q. You arrived on the SS. "France" accompanied by your three children who are present?

A. Yes.

Q. Your case has been reopened by authority of the bureau to re-examine you as to your ability to read both Hebrew and Yiddish. Can you read in either language?

A. I read a little and I will soon learn more if given an opportunity.

Q. In what language can you read a little?

A. Yiddish.

(Test given class 5-1653 Yiddish and Hebrew class F-5681; failed to read.)

By Mr. SCARLETT. I move that the former decision be affirmed.

By Mr. PARKER. I second the motion.

By Mr. CONNOR. I make it unanimous.

(Alien informed of reexclusion for reasons given at the former hearing.)

K. STECKLER, *Secretary.*

1 In United States District Court

*Writ of habeas corpus*

*The People of the United States of America to the Commissioner of Immigration, Greeting:*

We command you that you have the bodies of Szejwa Waldman and her three minor children, Zenia, Bessie and Sophia by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said Szejwa Waldman and her three minor children Zenia, Bessie and Sophia are called or charged, before one of the judges of the United States District Court for the Southern District of New York, in the General Post Office Building, Park Row, N. Y. City, on the 26th day of September, 1922, at 10:30 A. M. to do and receive what shall then and there be considered concerning the said Szejwa Waldman and her three minor children, and have you then there this writ.

Witness, Honorable Edwin L. Garvin, U. S. District Judge, the 23rd day of September, one thousand nine hundred and twenty-two.

ALEX. GILCHRIST, *Clerk*.

Writ allowed this 23rd day of September, 1922.

EDWIN L. GARVIN, *U. S. D. J.*

O'BRIEN, MALEVINSKY & DRISCOLL,

*Attorneys for Petitioner, Office and P. O. Address, 1482 Broadway, Borough of Manhattan, New York City.*

2 United States District Court, Southern District of New York.

In the matter of the application of Szejwa Waldman, et al. for a writ of habeas corpus.

*Petition for writ of habeas corpus*

*To the United States District Court in and for the Southern District of New York:*

The petition of Szejwa Waldman, respectfully shows to this court, as follows:

That Mrs. Szejwa Waldman and her three minor children, Zenia, Bessie and Sophia are unlawfully deprived of their liberty without due process of law by R. E. Tod, the commissioner of immigration for the port of New York; and that said detention is without any authority whatsoever. And your petitioner further states that the said Szejwa Waldman and her three minor children hereinbefore named, having embarked in France for the United States, arrived at the port of New York and were sent to the Ellis Island immigrant station on or about the 28th day of August, 1922, and were there detained by the said commissioner of immigration on the ground that the said Szejwa Waldman and her three minor children were liable to become public charges if admitted to the United States and also because said Szejwa Waldman was an illiterate person.

2 Your petitioner further states that said Szejwa Waldman appealed to the Department of Labor from the decision of the commissioner of immigration at Ellis Island and that the United States Department of Labor directed the said commissioner to reopen the case before a board of special inquiry for the purpose of according her a reexamination regarding her ability to read in Hebrew or in Yiddish, and in the event of her failure to pass the test the commissioner at Ellis Island was directed to proceed to deport the Waldman family without further reference of the case to the department.

Your petitioner submits herewith a copy of the letter containing said instructions and signed by E. J. Henning, Assistant Secretary of Labor. Your petitioner further states that said Szejwa Waldman was reexamined and that although she is able to read and write in Yiddish the said commissioner has declared her to be illiterate and has ordered her and her three children to be deported

on the next sailing which your petitioner believes to be Monday, September 25th, and has refused to allow an opportunity of appeal to the Department of Labor from the erroneous decision of the examining officer.

And, your petitioner further states that the said Szejwa Waldman and her family are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, namely Russia; that said Szejwa Waldman was ordered to be shot by the Russian authorities, but that she escaped and later made her way to France, and on the application of United States Senator

Le Baron B. Colt she was allowed to come to the United States; that petitioner was obliged to wait seventeen (17) months in Poland to secure her passport, which was not signed until December 12, 1921, and which was not viséd until July 14, 1922. Petitioner left her home town (Proskurov, Province of Podoler, Russia), in August, 1921, after having escaped from prison where she was placed by her persecutions. On the very day she escaped from prison there was a pogrom, as a result of which two (2) of her husband's cousins were killed; and that if she is deported from the United States she will be finally returned to Russia where she will be in danger of death on account of her religious faith; and that the said Szejwa Waldman is exempt from the operation of the illiteracy test, which claim has not heretofore been submitted to or considered by the commissioner of immigration pursuant to rule four (4), subdivision five (5) of the immigration rules.

Your petitioner states that the relatives of Mrs. Szejwa Waldman in the United States are willing and eager to furnish a bond that the Waldman family will not become public charges; that said relatives are willing and able to support the Waldman family; that John Lisker, of Providence, Rhode Island, is a cousin of Mrs. Waldman, and that said Lisker and his wife are taxed for approximately \$150,000 in the State of Rhode Island, and are willing entirely to support the Waldman family.

Your petitioner therefore states that the said Waldman family has not had a full and fair hearing, and that it has been deprived of the opportunity to submit evidence and witnesses showing the right of the said Waldman family to enter the United States and has been deprived of the right of final appeal to the Department of Labor.

Wherefore, your petitioner prays that a writ of habeas corpus may be issued to the said R. E. Tod, commissioner of immigration at Ellis Island, and that the said Szejwa, Zenia, Bessie, and Sophia Waldman may be discharged from such restraint.

SZEJWA WALDMAN.

Witness:

HYMAN LISKER,

424 Public St., Prov.

[Jurat showing the foregoing was duly sworn to by Szejwa Waldman omitted in printing.]

*Exhibit to petition*

DEPARTMENT OF LABOR,  
OFFICE OF THE ASSISTANT SECRETARY.

*Washington, September 15, 1922.*

55265 /59

Honorable LEBARON B. COLT,

*United States Senate, Washington, D. C.*

MY DEAR SENATOR: With reference to your interest in the case of Szejwa Waldman and three children, permit me to inform you that their exclusion is not due solely to the likelihood of their becoming public charges. The woman is unable to read and is not exempt from the operation of the illiteracy test. The child Zenia, is physically defective in that she is afflicted with dislocation of the left hip, with shortening of the left leg and lameness. The entire family falls within the category of "assisted aliens," their passage having been paid by the woman's brother, Libe Lisker.

In order, however, that no injustice may be done the aliens, the department has directed the commissioner of immigration at Ellis Island to reopen the case before a board of special inquiry for the purpose of according the woman a reexamination as to her ability to read in Hebrew or in Yiddish. In the event she fails to pass the test the commissioner at Ellis Island will proceed with their deportation without further reference of the case to the department.

Very truly yours,

E. J. HENNING,

*Assistant Secretary.*

OWM-C

United States District Court

*Return to writ of habeas corpus*

[Title omitted.]

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John M. Legans, being duly sworn, says that he is and during all the times herein mentioned has been an immigrant inspector in the service of the United States; that he is attached to the law department of the Immigration Service of the United States at Ellis Island, New York, N. Y.; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the directions of this court, the body of the said alien in his own proper person is produced herewith before this court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law and that the writ should therefore be quashed because

(a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation, pursuant to which the said alien is held, were not regular, fair, and in compliance with the statute applicable in such cases, nor facts from which the court can determine that the proceedings were either irregular, unfair, or not in compliance with said statute.

(b) The petition does not allege any facts which entitled this court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued.

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclusion in accordance with which the warrant of deportation was issued.

(d) It does not appear by allegations of facts that the issues sought by the petition now to be litigated in this court have not already been determined by the Department of Labor adversely to the said aliens in proceedings which were regular, fair, and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above-named aliens, copies of which are produced and filed herewith as part of this return:

(1) The aliens herein arrived at the port of New York on the 28th day of August, 1922, and on the 30th day of August, 1922, were duly accorded a hearing before a board of special inquiry held at Ellis Island, New York Harbor, New York. Upon said hearing proceedings were had, testimony taken, and other evidence introduced as more fully appears by the minutes of said hearing, a copy of which is hereto annexed and made a part of this return. Upon the hearing a medical certificate was introduced in evidence which certified that the alien Zenia Waldman was afflicted with dislocation of left hip, with shortening of left leg and lameness, which may effect ability to earn a living. The board thereafter duly and unanimously excluded the eldest alien as a person unable to read and Zenia Waldman as a person suffering from a physical defect, the defect being of such a nature that it may effect ability to earn a living, and all aliens excluded as likely to become a public charge and assist aliens.

(2) That the aliens were informed of their right to appeal to the Secretary of Labor and that his decision would be final. The record was duly forwarded to the Department of Labor on appeal and after carefully considering the evidence the Second Assistant Secretary directed that the case be re-opened before a board of special inquiry and that the woman be given a re-examination as to her ability to read both in Hebrew and Yiddish, and that if she fails, that all be deported without further reference of the case to the department.

(3) That in pursuance to said order the aliens herein were given another hearing before a different board of special inquiry and the minutes of the prior hearing being made a part hereof additional

proceedings were had, testimony taken, and other evidence introduced as more fully appears by the minutes, a copy of which is hereto annexed and made a part hereof. At this hearing no test was given class 5 1653 Yiddish and Hebrew class 5-5681; and the alien failed to read. The board duly and unanimously reaffirmed its former opinion of exclusions; that thereafter and, to wit, on September 22, 1922, the record of the rehearing was duly forwarded to the Department of Labor with instructions that their deportation would be proceeded with in accordance with the department's instructions.

(4) As appears by the minutes and exhibits aforesaid, the said aliens were duly informed and apprised of the charges against them; that said aliens were afforded a full, complete, and fair hearing by the Department of Labor upon said charges; the said aliens were afforded a full, complete, and fair opportunity to answer and to submit evidence upon such charges; there was before the Department of Labor evidence to sustain each of said charges; the Department of Labor duly found that the charges were sustained; and said charges were in fact fully sustained by the proofs that were before and were considered by the Department of Labor.

(5) The proofs and record of the proceedings before mentioned having been duly transmitted to him, the Secretary of Labor, after carefully considering the evidence presented in the record, duly affirmed the excluding decision of the board and directed the deportation of the aliens herein; and for the cause of the detention of the said aliens complained of in the petition herein, deponent says that the said aliens are and since the receipt of said writ of habeas corpus have been held under and in obedience to said writ.

11 Respondent respectfully denies any knowledge or information thereof sufficient to form a belief as to the truth of the allegations in the petition, except as to what is specifically admitted in the return filed herein.

Wherefore, deponent prays that the writ of habeas corpus herein be dismissed and the said aliens remanded to the custody of the commissioner of immigration at Ellis Island, New York, N. Y., to be dealt with in accordance with the said order of exclusion.

JOHN M. LYONS.

Sworn to before me this 28th day of September, 1922.

ANNA FALANG.

*Notary Public, N. Y. Co.*

Term expires March 30, 1923. N. Y. Co. Clerk's No. 278. N. Y. Register's No. 3210.

[Title omitted.]

The petition and writ of habeas corpus for the release of Szejwa Waldman and her three children Zenia, Bessie, and Sophia Waldman.

having come on to be heard before this honorable court on the 28th day of September, 1922, and after hearing William A. Needham, Esq., of counsel for the relators, in support thereof, and James C. Thomas, jr., Assistant U. S. attorney, in opposition thereof it is,

Ordered, that the said writ of habeas corpus be and the same hereby is dismissed and the relators remanded to the custody of the commissioner of immigration at the port of New York, for deportation, and it is

Further ordered, that the deportation of the relators be stayed until the 15th day of October, 1922, all costs and charges for the maintenance of said relators during said stay be paid by the relators, and it is

Further ordered, that if an appeal be taken on or before the 15th day of October, 1922, the relators be discharged upon the filing of a bond or undertaking in the sum of \$500 for each relator, to be approved by the court.

J. W. MACK,

U. S. C. J.

[File endorsement omitted.]

In United States District Court

*Petition for Appeal*

[Title omitted.]

The petitioners, Szejwa Waldman and her three minor children,

Zenia, Bessie and Sophia, the relators above named, by their attorneys, O'Brien, Malevinsky & Driscoll, feeling aggrieved

by the order and judgment made on the 28th day of September, 1922, by this court, dismissing the writ of habeas corpus herein, do hereby appeal from the said order and decision of this court, to the United States Circuit Court of Appeals for the Second Circuit, and pray that this appeal may be allowed, and that a transcript of the record of proceedings and papers upon which the said order and decision was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated, New York, September 29, 1922.

O'BRIEN, MALEVINSKY & DRISCOLL,

*Attorneys for Relators-Appellants,*

*482 Broadway, Manhattan Borough, New York City.*

WILLIAM A. NEEDHAM, Esq.,

*Of Counsel,*

In United States District Court

*Order Allowing Appeal*

[Title omitted.]

On reading the petition of Szejwa Waldman and her three minor children, Zenia, Bessie, and Sophia, made by O'Brien, Malevinsky &



Driscoll, their attorneys on their behalf, dated September 29, 1922, for appeal and consideration of the assignment of errors presented therewith, it is

Ordered, that the appeal herein be allowed as prayed for, and it is

Further ordered, that the judgment appealed from be stayed until the hearing and determination of said appeal, and it is

Further ordered, that a certified transcript of the record and all proceedings be transmitted to the Circuit Court of Appeals for the Second Circuit.

Dated, New York, September 29, 1922.

J. W. MACK,

*Judge of the United States Circuit Court.*

*Assignment of Errors*

[Title omitted.]

Now come the relators in the above-entitled cause and file the following assignment of errors upon which they will rely upon the prosecution of the appeal in the above-entitled cause, from a decree made and entered herein in this court on the 28th day of September, 1922:

1. That the court erred in dismissing the writ of habeas corpus herein, and in not discharging the petitioner and her three children, pursuant to the petition submitted in support of the writ.

2. That the court erred in not granting the writ and submitting the case to the commissioner of immigration for a rehearing on the question as to whether or not the alien was a refugee in accordance with the provisions of section one of the immigration laws, and  
17 in accordance with the provisions of paragraph "C." of subdivision five, of rule four, of the immigration laws.

3. That the court erred in not granting the writ, and in not holding that the petitioner had been deprived of her rights to a fair and impartial trial through a refusal on the part of the immigration authorities to grant her an appeal from the second hearing had on the question of her illiteracy.

4. That the court erred in not granting the writ on the ground that the relators would not become public charges in accordance with the findings of the immigration authorities because of the expressed willingness of the relatives to the relators to support and maintain them.

5. That the court erred in dismissing the writ, and directing that the relators be remanded to the custody of the commissioner of immigration and deported.

Whereas, by the law of the land, the said writ of habeas corpus should have been sustained and the relators-appellants should have

been released from the custody of Robert E. Tod, commissioner of immigration at the port of New York, the appellee herein, the said Szejwa Waldman and her three minor children, Zenia, Bessia, and Sophia, appellants, by their attorneys O'Brien, Malevinsky & Driscoll, and William A. Needham, Esq., of counsel, pray that for the errors aforesaid and other errors in the record and proceedings, the judgment and decision aforesaid made on the 28th day of September, 1922, may be reversed and for naught held and esteemed, and that the said writ of habeas corpus herein be sustained, and the relators-appellants dismissed from the custody of the respondent-appellee, and for such other and further relief as may be proper in the premises.

Dated, New York, September 29th, 1922.

O'BRIEN, MALEVINSKY & DRISCOLL,

*Attorneys for Relators-Appellants,*

*1482 Broadway, Manhattan Borough, New York City,*

WILLIAM A. NEEDHAM, Esq.,

*Of Counsel,*

[Citation in usual form omitted in printing.]

19-20 United States District Court, Southern District of New York

*Stipulations extending time*

United States of America, ex rel. Szejwa Waldman and her Three Minor Children, Zenia, Bessie and Sophia, relators-appellants,

against

Robert E. Tod, commissioner of immigration at the Port of New York, respondent-appellee

M. 7-267

It is hereby stipulated and agreed by and between the attorneys or the respective parties herein that the time of the appellants to serve and file the transcript of record in the above entitled matter and the same is extended to the 15th day of December, 1922.

Dated, New York, December 1, 1922.

O'BRIEN, MALEVINSKY & DRISCOLL,

*Attorneys for Appellants,*

WILLIAM HAYWARD,

*Attorney for Respondent,*

So ordered,

ALEX. GILCHRIST, Jr., *Clerk,*

20a [Title omitted.]

It is hereby stipulated and agreed, by and between the attorneys for the respective parties herein that the time of the appellants to serve and file the transcript of record in the above entitled matter be and the same is extended to the 22d day of December, 1922.

Dated, New York, December 13, 1922.

O'BRIEN, MALEVINSKY & DRISCOLL,  
*Attorneys for Appellants.*

WILLIAM HAYWOOD.  
*Attorney for Respondent.*

So ordered.

ALEX. GILCHRIST, Jr., *Clerk.*

21 United States District Court, Southern District of New York

*Stipulation retranscript of record*

United States of America, ex rel. Szejwa Waldman and her Three  
Minor Children, Zenia, Bessie and Sophia, relators-appellant

against

Robert E. Tod, commissioner of immigration at the Port of New  
York, respondent-appellee

M. 7—267

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said district court in the above entitled matter as agreed on by the parties.

Dated, New York, December 21, 1922.

O'BRIEN, MALEVINSKY & DRISCOLL,  
*Attorneys for Appellants.*

WILLIAM HAYWARD,  
*Attorney for Respondent.*

22 In United States District Court

[Title omitted.]

*Clerk's certificate*

I, Alexander Gilchrist, jr., clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said district court in the above entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York in the Southern Dis-

ALEXANDER GILCHRIST, Jr., *Clerk.*

The petition of Szejwa Waldman alleged that she and her children were seeking admission to the United States to avoid religious persecution in Russia, the country of their last permanent, that she escaped in August, 1921, and ultimately made her way to France but was obliged to wait seventeen months in Poland to secure her passport, which was not signed until December 12, 1921, and was not viséed until July 14, 1922. She further alleged, because of incidents set forth, that if she were deported from the United States she would be finally returned to Russia, where she would be in danger of death on account of her religious faith. She set up in her petition that she was exempt from the operation of the literacy test and also that she had not a full and fair hearing before the immigration authorities. The return to the writ set forth that the aliens arrived at New York on August 28, 1922, and that on August 30, 1922, a hearing was accorded to them before a board of special inquiry held at Ellis Island, New York Harbor; that a medical certificate was introduced in evidence which certified that the daughter Zenia was afflicted with dislocation of the left hip and shortening of the left leg and lameness, which might affect her ability to earn her living. It was further alleged that the board unanimously excluded the mother as a person unable to read, the daughter Zenia as a person suffering from a physical defect of such nature that it might affect her ability to earn a living and that all the aliens

should be excluded as likely to become a public charge and as assisted aliens. The return further alleged that due procedure was had and that the aliens received a full and fair hearing. Accompanying the return and as a part thereof were the minutes of hearings held before boards of special inquiry on August 30, 1922, and September 19, 1922.

The following appears from the minutes of August 30, 1922. Szejwa Waldman was examined and testified that she and her children had always lived at Proskurov, Russia, and that her departure from Russia was because of religious persecution. Her ability to read was tested in Yiddish. The test is not set forth nor described; but the record contains an observation by Travis, one of the members of the board of special inquiry, "Reads some of the words and repeats to interpreter without looking at the text, but can not make any connecting thought." Szejwa Waldman further stated

25 that she was a white goods seamstress, that her married brother had paid her passage and that she was going to her brother in Providence, where she would join three brothers and three sisters. A medical certificate was introduced in evidence which certified to the physical condition of Zenia, as set forth in the return. It further appeared that one of Szejwa Waldman's brothers had been contributing to the support of her and her children from time to time. Two brothers testified and from their testimony, it appears that each was in comfortable circumstances and each was willing and competent to take care of the relators. At the conclusion of the hearing the board unanimously decided that the mother should be excluded as a person unable to read and Zenia should be excluded as a person suffering from a physical defect which might affect her ability to earn a living and all relators should be excluded as likely to become a public charge and assisted aliens.

This decision was stated to the aliens and they were informed that they had the right to appeal to the Secretary of Labor and they stated that they desired so to appeal.

On September 18, 1922, the chief deporting officer at Ellis Island received the following letter signed by H. R. Landis, Assistant Commissioner:

"Bureau Letter of September 15th directs in the case of Szejwa Waldman and children, S I 47, SS. "France," August 28th, that the case be reopened before the board of special inquiry and the woman be given a reexamination as to her ability to read in both Hebrew and Yiddish, if she so chooses, and in case she fails to pass the test that they all be deported without further reference of the case to the department."

There is no copy in the record of the Bureau Letter of September 15th. A hearing was had before the board of special inquiry. The first board had consisted of Inspectors Connor, Travis, and Lovejoy. The second board consisted of Inspectors Connor, Scarlett, and Parker. The examination of the second hearing is very brief and is here set forth.

"Q. What is your name?

"A. Szejwa Waldman.

"Q. You arrived on the SS. "France" accompanied by your three children who are present?

26 "Q. Your case has been reopened by authority of the bureau to reexamine you as to your ability to read both Hebrew and Yiddish. Can you read in either language?

"A. I read a little, and I will soon learn more if given an opportunity.

"Q. In what language can you read a little?

"A. Yiddish.

"(Test given Class 5-1654 Yiddish and Hebrew Class F-5681; failed to read.)

"By Mr. SCARLETT. I move that the former decision be affirmed.

"By Mr. PARKER. I second the motion.

"By Mr. CONNOR. I make it unanimous.

"(Alien informed of reexclusion for reasons given at the former hearing.)"

The aliens were not informed of their right to appeal to the Secretary of Labor and no appeal was taken. The aliens were then ordered deported and hence this writ.

O'Brien, Malevinsky & Driscoll (Laurence L. Cassidy and William A. Needham, of counsel), for relators-appellants.

William Hayward, United States attorney (James C. Thomas, Asst. United States attorney, of counsel), for appellee.

MAYER, *Circuit Judge*:

Preliminary it is important to point out that this return fails to set for the details of the test applied either at the first or second hearing.

Section 3 of the immigration laws clearly distinguishes between Hebrew and Yiddish. It provides, *inter alia*, as follows:

"That after three months from the passage of this act, in addition to the aliens who are by law now excluded from admission into the United States, the following persons shall also be excluded from admission thereto, to wit:

27 "All aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish: \* \* \* That for the purpose of ascertaining whether aliens can read the immigrant inspectors shall be furnished with slips of uniform size, prepared under the direction of the Secretary of Labor, each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. *Each alien may designate the particular language or dialect in which he desires the examination to be made, and shall be required to read the words printed on the slip in such language or dialect.*" [Italics ours.]

From the foregoing, it is evident that the Congress realized that there is a distinction between Hebrew, a classic language, and

Yiddish. At the hearing of August 30, 1922, the mother was tested solely in Yiddish. The department instructions contained in the letter of September 19, 1922, ordered a reexamination as to the mother's ability in both Hebrew and Yiddish. For this double test, there is no warrant in the statute and anyone familiar with these two languages knows that a person of the type of this relator might be able to read Yiddish and unable to read Hebrew. It will be observed also that, although the mother in her examination of September 19, 1922, stated that she could read a little in Yiddish, the board nevertheless reported that they examined her in both Hebrew and Yiddish.

This procedure in itself was contrary to the requirements of the statute and deprived relators of a hearing which to have been fair must, at least, have been in accordance with the statute. As other cases of this general character may arise, it is desirable to point out, also, that in making returns it should appear whether or not the details of the statutory test were conformed with. The statement that the test was given is not enough. "Class 5-1654" conveys no information to the court. There should, at least, be an understand-

able description of the test actually made by the Board and  
28 of the respects in which the immigrant failed to read, so that the courts may be informed from the record as to whether or not the hearing was in accordance with statutory requirements. Both in the original hearing and in the reexamination the minutes on this point set forth merely the conclusions of the boards of special inquiry as to the tests and not the facts upon which those conclusions were based.

It is also important that the alien be clearly informed of his or her right to designate the particular language or dialect in which he or she desires the examination to be made.

But there is a much more serious defect in this proceeding which goes to a question of jurisdiction.

Section 17 of the immigration laws (noted in the margin) is cautious to provide an absolute and fair right of appeal so that the exclusion of the alien shall not rest solely upon the determination of a board of special inquiry. In order to carry out the administrative requirements of this section, Rule 17, containing various subdivisions has been promulgated.

Subdivision 1 of rule 17 provides:

"Subdivision 1. Informing alien as to right of appeal. Where an appeal lies the alien shall be informed of his right thereto, and the fact that he has been so informed shall be entered in the minutes."

Subdivision 9 of the same rule provides:

"Subdivision 9. Reopening of cases: Whenever a case is referred back to a board by the bureau or the department in order that additional evidence may be taken, such case is thereby reopened; and after the new evidence has been taken the board shall render a new decision, in which it may in its discretion reaffirm, alter, or reverse its previous decision. The mere action or referring back a case under such circumstances is not to be taken as an indication of any disap-

proval by the bureau or the department of the board's decision or of what the new decision should be."

29 Subdivision 11 of the same rule provides:

"Subdivision 11. Procedure in reopened cases: The hearing in a case reopened before a board of special inquiry shall be of the same nature and be subject to the same conditions, limitations, and privileges as an original hearing before such a body."

It is plain that both within the intent of the statute and in accordance with the rules made in pursuance thereof, subdivision 11, supra, is here controlling. Subdivision 9 provides for the taking of additional evidence, and thereby the reopening of the case, "because obviously a previous record is incomplete" and then requires the board to render "a new decision" after the "new evidence" has been taken and it is made clear that the board is not to be controlled in its new decision by the fact that the case is referred back to the board by the bureau or the department. Obviously it is not the original decision but the new decision which determines whether or not the alien shall be excluded. Such decision is clearly appealable under section 17 of the statute, and if there were any doubt whatever on that point, subdivision 11 of rule 17, supra, has made the procedure entirely clear.

In the case at bar the effect of the letter from Assistant Commissioner Landis, based on the bureau letter of September 15, 1922, was to inform the board of special inquiry that no appeal was necessary and that the board's decision would be final.

The point upon which Szejwa Waldman was to be examined and which was to determine whether or not she and her children were to be excluded was the vital question of her ability to read in conformity with the requirements of section 3 of the statute.

If she had been informed of her right to appeal (rule 17, subd. 1) and had she appealed, it would doubtless have been realized by the bureau at Washington that the ruling laid down in the letter of Assistant Commissioner Landis was contrary to the

statute, as pointed out supra, or the bureau might have con-

30 cluded that the actual test was not properly given. The point is that this relator was deprived of the vital protection of appeal which the statute and the rules have set up to insure a fair hearing for such applicants in accordance with law.

There is a letter attached to the petition for the writ written by Assistant Secretary of Labor Henning to United States Senator Colt. We must disregard this letter as not being a part of the record, which we have the power to review. But, referring to the letter merely for argumentative purposes, it is interesting to note that the language used by the Assistant Secretary is that the department had directed that the case be reopened "for the purpose of according the woman a re-examination as to her ability to read in Hebrew or in Yiddish."

It remains only to state that the record leaves the case of Zenia in a position where it must be assumed that the decision to ex-



clude her was not affirmed by the Department of Labor, and the department may very well have disagreed with the local board as to whether or not the physical defect would interfere with the ability of Zenia to earn a living.

The fate of the mother and the three children was placed entirely upon the question as to whether or not she could read Hebrew and Yiddish.

While it seems to us that the reading test applied was not in accordance with the statute, we prefer to rest our decision upon the failure to accord to these relators an opportunity to appeal, and this failure we regard as a fatal jurisdictional defect which renders the order of deportation void.

In view of the foregoing, it is unnecessary to discuss the contention that the record shows that relators left their last permanent residence because of religious persecution and hence that illiteracy was not a bar under section 3 of the statute.

The order below is reversed, and the district court is instructed to enter an order sustaining the writ and discharging relators.

NOTE.—"Section 17. That boards of special inquiry shall be appointed. \* \* \*

\* \* \* Each board shall consist of three members.  
 \* \* \* Such boards shall have authority to determine  
 31 whether an alien who has been duly held shall be allowed to  
 land or shall be deported. \* \* \* Such boards shall keep  
 a complete permanent record of their proceedings and of all such  
 testimony as may be produced before them; and the decisions of any  
 two members of the board shall prevail, but either the alien or  
 any dissenting member of the said board may appeal through the  
 commissioner of immigration at the port of arrival and the Com-  
 missioner General of Immigration to the Secretary of Labor, and the  
 taking of such appeal shall operate to stay any action in regard  
 to the final disposal of any alien whose case is so appealed until the  
 receipt by the commissioner of immigration at the port of arrival  
 of such decision, which shall be rendered solely upon the evidence  
 adduced before the board of special inquiry. In every case where  
 an alien is excluded from admission into the United States under  
 any law or treaty now existing or hereafter made, the decision of  
 a board of special inquiry adverse to the admission of such alien  
 shall be final, unless reversed on appeal to the Secretary of Labor  
 \* \* \*."

32

United States Circuit Court of Appeals

[Title omitted.]

Judgment filed March 27, 1923.

Appeal from the District Court of the United States for the  
 Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said district court be and it hereby is reversed and the district court instructed to enter an order sustaining the writ and discharging relators and their bail.

C. M. H.

J. M. M.

It is further ordered that a mandate issue to the said district court in accordance with this decree.

34 United States Circuit Court of Appeals

[Title omitted.]

*Petition for rehearing*

*To the Judges of the Circuit Court of Appeals for the Second Circuit:*

The petition of Robert E. Tod, commissioner of immigration at the port of New York, by William Hayward, United States attorney for the Southern District of New York, respectfully shows:

This cause was argued at the present term on the 23rd day of February, 1923, before Judges Hough, Manton, and Mayer. On

35 March 20, 1923, the opinion written by Judge Mayer and concurred in by Judges Hough and Manton was filed. Upon the opinion, it was decided that the order below dismissing the writ of habeas corpus and remanding the relators be reversed and that the district court be instructed to enter an order sustaining the writ and discharging the relators.

The reversal is based upon the view that the appellants were denied a fair hearing in accordance with the statute, in that there is no provision for a double test as to an alien's ability to read: that the record was devoid of any details showing that the statutory reading tests were complied with, and that there was a serious defect which goes to the question of jurisdiction, the appellants being deprived of the vital protection of appeal which the statute and the rules have set up to insure a fair hearing.

The respondent-appellee now respectfully applies for a rehearing upon the appeal, for the following reasons:

POINT 1

This court erred in instructing the district court to enter an order sustaining the writ and discharging relators. The court should have remanded the cause to the district court for trial of the merits.

The court is respectfully referred to the case of Ng Fung Ho, otherwise known as Ung Kip, and others, *Petitioners vs. Edward White*, as commissioner of immigration for the port of San Francisco (decided in the United States Supreme Court—October Term, 1921—

36 No. 176, the opinion being delivered by Mr. Justice Brandeis, on May 29, 1922—United States Supreme Court advance sheets), which indicates that the practice to be pursued by the United States courts, where by virtue of unfair hearings such courts

are called upon to exercise jurisdiction under habeas corpus, instead of discharging the appellants, the court should remand the cause to the district court in order that that court might take evidence upon the question of the right of the appellants to enter the country under the Chinese exclusion laws and the immigration laws.

In the *Ng Fung Ho et al. vs. White* case (supra), the Supreme Court's view upon this point is indicated in the closing portion of its opinion:

"It follows that Gin Sang Get and Gin Sang Mo are entitled to a judicial determination of their claims that they are citizens of the United States; but it does not follow that they should be discharged. The practice indicated in *Chin Yow vs. United States*, supra, and approved in *Kwock Jan Fat vs. White*, 253 U. S. 454, 465, should be pursued. Therefore, as to Gin Sang Get and Gin Sang Mo, the judgment of the Circuit Court of Appeals is reversed and the cause remanded to the District Court for trial in that Court on the question of citizenship and for further proceedings in conformity with this opinion."

In the *Chin Yow vs. United States*, 208 U. S. 8, case, the Supreme Court, at page 13, said:

"The courts must deal with the matter somehow, and there seems to be no way so convenient as a trial of the merits before the judge."

37 And in the *Kwock Jan Fat* case, 253 U. S. 454, at page 465, the court, after having decided that the Circuit Court of Appeals should have held that the petitioners had not been granted a fair hearing in conformity with due process of law, said:

"The practice indicated in *Chin Yow vs. United States*, 208 U. S. 8, is approved and adopted, the judgment of the Circuit Court of Appeals is reversed, and the cause is remanded to the district court for the trial of the merits."

It is respectfully contended that if the judgment of this court in the instant case be carried into effect, it would result in the admission into the country of aliens notwithstanding their right to enter has not been subjected to the actual test of the Immigration Statute.

For the above reasons, it is respectfully prayed that the United States Circuit Court of Appeals for the Second Circuit modify its order so that the trial court may proceed to determine the admissibility of the appellants here involved.

Respectfully submitted,

WILLIAM HAYWARD,

*United States Attorney for the Southern District of New York,*

*Attorney for Respondent-Appellee.*

JAMES C. THOMAS,

*Assistant United States Attorney, of Counsel.*

[Jurat showing the foregoing was duly sworn to by William Hayward omitted in printing.]

39

In United States Circuit Court of Appeals

[Title omitted.]

*Opinion on petition for rehearing*

PER CURIAM:

Upon this petition for a rehearing submitted by the United States Attorney, attention is called to *Chin Yow vs. United States*, 208 U. S. 8, at page 13, *Kwock Jan Fat vs. United States*, 253 U. S. 451, at page 465 and to the recent decision of *Ng Fung Ho* otherwise known as *Ung Kip*, and others, petitioners vs. Edward White, as Commissioner of Immigration for the Port of San Francisco, decided May 29, 1922.

40 It is undoubtedly the law, that, generally in a habeas corpus proceeding on behalf of a Chinaman the Chinaman is entitled to a judicial hearing for the reason that, in these cases, the relator claims admission to the United States as a citizen thereof. In a non-Chinese immigration case, however, the applicant for admission is not entitled to a judicial hearing, unless perchance, (a point which has not arisen) he should claim citizenship. The result is that on appeal in habeas corpus of an alien, such as the relator in the case at bar, we can do no more than examine into the regularity or irregularity of the proceeding. If, as here, we find the proceeding was not in accordance with law, the result is that the relator is discharged from custody. A determination of this character is not, however, *res adjudicata* and does not, in any manner, prevent the United States or its appropriate officials from again beginning proceedings against such an alien as this relator. The effect of our decision is merely to discharge the relator from custody because the particular proceeding complained of was not in accordance with law. The order entered upon our mandate will not prevent the beginning of an appropriate proceeding, if the Government is so advised.

For the reasons outlined, the petition for rehearing is denied.

41

In United States Circuit Court of Appeals

[Title omitted.]

*Order overruling petition for rehearing—filed April 13, 1923*

A petition for rehearing having been filed herein by counsel for the respondent-appellee:

Upon consideration thereof it is

Ordered that said petition be and hereby is denied.

C. M. H.

J. M. M.

42

[File endorsement omitted.]

## In United States Circuit Court of Appeals

*Clerk's certificate*

UNITED STATES OF AMERICA,

*Southern District of New York, ss:*

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 42, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of United States ex rel Szejwa Waldman et al., Relators-Appellants, against Robert E. Tod, as Commissioner, etc., Respondent-Appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 18th day of June, in the year of our Lord one thousand nine hundred and twenty-three, and of the independence of the said United States the one hundred and forty-seventh.

WM. PARKIN, *Clerk*.*Writ of certiorari and return filed Nov. 1, 1923*UNITED STATES OF AMERICA, *ss:*

*The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:*

Being informed that there is now pending before you a suit entitled "In the matter of the application of Szejwa Waldman et al.," which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable William H. Taft, Chief Justice of the United States, the eleventh day of October, in the year of our Lord one thousand nine hundred and twenty-three.

WM. R. STANSBURY,

*Clerk of the Supreme Court of the United States.*

[File endorsement omitted.]

47

In the Supreme Court of the United States  
October Term 1923

No. 392

Robert E. Tod, as Commissioner of Immigration, Petitioner

v.

Szejwa Waldman et al., Respondents

*Stipulation as to return to writ of certiorari*

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Second Circuit to the writ of certiorari granted therein.

JAMES M. BECK, *Solicitor General*.

O'BRIEN, MALEVINSKY & DRISCOLL,

*Counsel for Respondent.*

OCT. 15, 1923.

48     *To the Honorable The Supreme Court of the United States,  
          Gracing:*

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of said Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, October 26, 1923.

WM. PARKIN,

*Clerk of the United States Circuit Court of Appeals*

*for the Second Circuit.*

49     [File endorsements omitted.]

